

IC 24-4.4

ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING

IC 24-4.4-1

Chapter 1. General Provisions and Definitions

IC 24-4.4-1-101

Short title; rules concerning licensing system for creditors and mortgage loan originators

Sec. 101. (a) This article shall be known and may be cited as the First Lien Mortgage Lending Act.

(b) Notwithstanding any other provision of this article or IC 24-4.5, the department may adopt emergency rules under IC 4-22-2-37.1, to remain effective until codified in the Indiana Code, in order to provide for a system of licensing creditors and mortgage loan originators that meets the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V) and the interpretations of that Act issued by the Secretary of Housing and Urban Development.

As added by P.L.145-2008, SEC.20. Amended by P.L.182-2009(ss), SEC.369.

IC 24-4.4-1-102

Purposes; rules of construction

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, and regulations.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-103

Unified coverage of subject matter; construction against implied repeal

Sec. 103. This article:

- (1) is a general act intended as a unified coverage of its subject matter; and
- (2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-104

Severability

Sec. 104. The provisions of this article are severable, so that if:

- (1) any provisions of this article; or
- (2) the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-201

Application; nonresident debtor

Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

- (a) that is secured by an interest in land in Indiana; and
- (b) the closing for which takes place after December 31, 2008.

(2) This article does not apply to a first lien mortgage transaction if:

- (a) the debtor is not a resident of Indiana at the time the transaction is entered into; and
- (b) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence.

As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.134.

IC 24-4.4-1-202

Exempt transactions

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (4) A first lien mortgage transaction made:
 - (a) in compliance with the requirements of; and
 - (b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.
- (5) A supervised financial organization.
- (6) An operating subsidiary that is majority owned, directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.
- (7) A credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-203

Jurisdiction over creditor

Sec. 203. Any civil court in Indiana may exercise jurisdiction over any creditor with respect to any conduct in Indiana governed by this article or with respect to any claim arising from a transaction subject to this article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court by the service of process.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-301

Definitions

Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(2) "Creditor" means a person:

(a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (13)(a) in a tablefunded transaction.

(3) "Department" refers to the members of the department of financial institutions.

(4) "Director" refers to the director of the department of financial institutions.

(5) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(6) "First lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for

personal, family, or household purposes.

(7) "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who regularly engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(8) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(9) "Person" includes an individual or an organization.

(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or

(b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.

(11) "Revolving first lien mortgage transaction" means an arrangement between a creditor and a debtor in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, credit service charges or loan finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

(12) "Supervised financial organization" means a person that is:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(13) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one

(1) business day after the funding of the transaction.
As added by P.L.145-2008, SEC.20.